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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,946	05/22/2006	Swee Hin Teoh	2597.004 (FP3037/GM)	3587
	7590 09/27/201 HENBERG FARLEY &	EXAMINER		
5 COLUMBIA CIRCLE			PRONE, CHRISTOPHER D	
ALBANY, NY 12203			ART UNIT	PAPER NUMBER
			3738	
			MAIL DATE	DELIVERY MODE
			09/27/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

1) Responsive to communication(s) filed on 22 May 2006. 2a		Application No.	Applicant(s)				
Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **I NO period for roby is specified above, the maintenant station year of the special communication of the communication. If NO period for roby is specified above, the maintenant station year of the special communication of the communication. If NO period for roby is specified above, the maintenant station year of the communication. If NO period for roby is specified above, the maintenant station year of the communication. If NO period for roby is specified above, the maintenant station year of the communication. If NO period for roby is specified above, the maintenant station year of the communication. If NO period for roby is specified above, the maintenant station of the communication. If NO period for roby is specified above, the maintenant station is non-final. **Station** **Taking the produce of the communication is non-final. **Station** **Taking the produce of the communication is non-final. **Simple the specification is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Exparte Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4)** Claim(s)1-5.8-10.13, 19.20.23-44 and 71-83 is/are pending in the application. 4a) Of the above claim(s)		10/579,946	TEOH ET AL.				
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DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-5, 8-10, 13, 19, 20, and 23-44, drawn to a bioabsorbable plug implant, classified in class 623, subclass 23.75.
- II. Claims 71-83, drawn to a method for bone tissue regeneration, classified in class 623, subclass 23.75.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process such as allowing the plug to contact fluid prior to insertion so that it is expanded and forced into the whole or defect.

Restriction for examination purposes as indicated is proper because all these inventions listed in this action are independent or distinct for the reasons given above and there would be a serious search and/or examination burden if restriction were not required because at least the following reason(s) apply: the prior art applicable to one invention would not likely be applicable to another invention.

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Art Unit: 3738

Applicant is advised that the reply to this requirement to be complete <u>must</u> include (i) an election of a invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable upon the elected invention.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

This application contains claims directed to the following patentably distinct species of implants:

Species 1 shown in figure 4A

Species 2 shown in figure 4B

Species 3 shown in figure 5A

Species 4 shown in figure 5B

Species 5 shown in figure 7

The species are independent or distinct because the makeup of the devices including their shape and structure are substantially different allowing them to function in a different manner. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, or a single grouping of patentably indistinct species, for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claims are considered generic.

There is a search and/or examination burden for the patentably distinct species as set forth above because at least the following reason(s) apply: the species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or this field of art is crowded with a large number of publications and patents; and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues.

Applicant is advised that the reply to this requirement to be complete <u>must</u> include (i) an election of a species or a grouping of patentably indistinct species to be examined even though the requirement <u>may</u> be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected species or grouping of patentably indistinct species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species or grouping of patentably indistinct species.

Should applicant traverse on the ground that the species, or groupings of patentably indistinct species from which election is required, are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing them to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

A telephone call was made to Victor Cardona on 9/21/10 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTOPHER D. PRONE whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday through Fri 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone Examiner Art Unit 3738

/Christopher D Prone/

/Corrine M McDermott/
Supervisory Patent Examiner, Art Unit 3738